

REMARKS

This responds to the Office Action dated on September 24, 2007. Claims 1-10 and 12-22 are amended. No claims are canceled. No claims are added. As a result, claims 1-38 are now pending in this patent application, with claims 24-38 having been withdrawn by the Examiner.

Request for Telephonic Interview

Applicant's counsel left several telephone messages for Examiner Alyssa Alter requesting a telephonic interview, but were unable to schedule such a telephonic interview. Accordingly, Applicant's counsel, Suneel Arora, hereby respectfully formally requests a telephonic interview under MPEP § 713 with Examiner Alter, before issuance of any further Official Action in the present matter, to discuss the present amendments and remarks and all rejections, including the rejections using the Wang et al. (U.S. Patent No. 5,309,917) reference. It is believed that such a telephonic interview will help facilitate and expedite the examination of this case.

Response to Restriction Requirement

Applicant respectfully submits that the present Office Action, mailed September 24, 2007, did not acknowledge or respond in any way to the reasoning presented in Applicant's previous traversal of the Restriction Requirement of January 8, 2007, nor did it indicate reconsideration or finality, as required by MPEP 821.01. Accordingly, Applicant respectfully requests reconsideration and reserves all rights to petition the Restriction Requirement of January 8, 2007, as well as the additional restriction of the present Office Action. With respect to the additional restriction of claims 37 and 38 in the present Office Action, Applicant respectfully submits that such new claims were presented before any office action "on the merits" had been received, therefore, the Office Action's reasoning with respect to constructive election *after* an office action "on the merits" does not apply.

Information Disclosure Statement

Applicant submitted an Information Disclosure Statement and a 1449 Form on November 16, 2004. Applicant notes the reference listed on page 2, under "Other Documents" has not been

initialed. Applicant respectfully requests that an initialed copy of the 1449 Form be returned to Applicant's Representatives to indicate that the cited references have been considered by the Examiner.

§112 Rejection of the Claims

Claims 1-21 and 23 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

Applicant has amended claims 1-10 and 12-22 to clarify. Claims 2-21 further define patentably distinct independent claim 1 and claim 23 further defines patentably distinct independent claim 23. Therefore, dependent claims 2-21 and 23 are also believed to be allowable. Therefore, Applicant respectfully requests the rejection to claims 1-21 and 23 under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

§102 Rejection of the Claims

Claims 1-10 and 12-23 were rejected under 35 U.S.C. § 102(b) for anticipation by Wang et al. (U.S. Patent No. 5,309,917). Applicant respectfully traverses.

The Office Action asserts:

Regarding claims 1-10 and 12-23, Wang et al. discloses a cardiac monitoring system with a sensing circuitry. Wang et al. discloses “a time frequency distribution is taken of the time derivative thoracic impedance signal after low- and high-pass filtering to identify B and X wave events in the signal which are used to determine ventricular ejection time and dz/dt_{\min} for a determination of heart stroke volume by conventional methods.” (See Abstract).

(Office Action, Page 3). Applicant has amended the claims to overcome this rejection. First, instead of Wang's processing of a “thoracic impedance signal,” Applicant has clarified that the sensing circuit of claim 1 is configured for sensing “an intrinsic electrical heart signal,” as similarly recited or incorporated in these claims. Applicant also cannot find in Wang et al. any disclosure of the intrinsic electrical heart signal sensing circuit being configured to trigger adjustment of a frequency bandwidth as a function of a first time period, wherein the first time period represents an elapsed time, relative to the event, the elapsed time measured during the same cardiac cycle as the event, as similarly recited or incorporated in these claims. Instead, Wang et al. merely states, “EKG data are analyzed to identify peak amplitude and to compare

spacing between peak amplitude adaptively to more accurately identify R wave peaks.” (See, Abstract) Because all elements recited or incorporated in claims 1-10 and 12-23 cannot be found in Wang et al., Applicant respectfully submits that no *prima facie* case of anticipation presently exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this rejection of these claims.

For brevity, Applicant defers but reserves the right to later present remarks concerning the dependent claims, which Applicant respectfully submits recite patentable subject matter beyond that recited in their respective base claims.

§102 and §103 Rejections of the Claims

Claim 11 was rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Wang et al. (U.S. Patent No. 5,309,917). Applicant respectfully traverses on the grounds that no *prima facie* case of obviousness exists with respect to claim 11 for the reasons discussed above with respect to the § 102 rejection. Accordingly, Applicant respectfully requests withdrawal of this rejection of claim 11.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner’s personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to

pursue any cancelled or withdrawn claims in a subsequent patent application claiming the benefit of priority of the present patent application, or to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

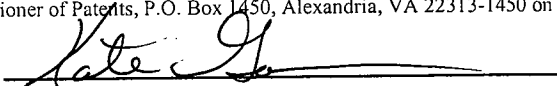
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Date January 24, 2008

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24 day of January 2008.

KATE GANNON
Name


Signature